

**AMENDMENT FIVE
to the
CONTRACT Between
THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
and
Navigant Consulting, Inc.
State Medicaid Health Information Technology Plan**

The above referenced agreement was entered into by and between the Kansas Health Policy Authority (hereinafter "KHPA") and Navigant Consulting, Inc. (hereinafter "Navigant") beginning March 22, 2011. Effective July 1, 2011 the KHPA was transferred to the Department of Health and Environment, hereinafter referred to as ("KDHE"), as The Division of Health Care Finance, hereinafter referred to as ("DHCF"), in accordance with Executive Reorganization Order No. 38, hereinafter referred to as "ERO No. 38," by Governor Sam Brownback on February 4, 2011.

The Parties hereto agree to amend the contract as follows:

I. Term of Agreement:

The services covered by this Amendment Five will be provided by Navigant between October 1, 2013 to September 30, 2015.

II. Background:

Navigant has been working with KDHE since April 2011 to implement and support the ongoing operations of the Kansas Medicaid Electronic Health Record (EHR) Incentive Payment Program. Navigant has been integral to the creation and development of many of the required Centers for Medicare and Medicaid Services (CMS) required program and policy documentation.

III. Scope of Work:

Due to anticipated EHR Incentive Rule changes required by CMS's upcoming definition of Meaningful Use Stage 3, KDHE will require assistance in revising and updating all existing EHR Incentive Program documentation during Federal Fiscal Years FFY 2014-2015. KDHE will also require assistance in reviewing the business rules of the existing EHR Incentive Payment System, MAPIR, which Eligible Hospitals and Eligible Providers use to request EHR Incentives.

The existing scope of Navigant's work is not sufficient to meet the State's needs through FFY 2015.

This Scope of Work will be used to support the ongoing operations and upcoming changes required by Kansas's EHR Incentive Payment Program.

Navigant shall provide additional support to KDHE's ongoing implementation of the EHR incentive payment program through a deliverable and time and materials contract.

IV. Tasks and Deliverables:

Table 1: Federal Fiscal Year 2014 Tasks, Deliverables and Costs			
Task	Deliverable	Maximum Hours Allotted	Invoices to State for Each Task Not to Exceed
Provide ongoing project management support including leading weekly status meetings, monitoring EHR Incentive Payment policy changes issued by CMS including Meaningful Use Stage 2 and 3 monitoring and support.	Weekly project management materials - meeting agendas, minutes; whitepapers on CMS Policy changes	764	\$ 195,000.00
Develop and deliver annual SMHP/IAPD update before June 30, 2014 and provide training to State staff on SMHP/IAPD development.	Annual SMHP and IAPD updates, State staff training.	500	\$ 127,500.00
Other duties as assigned that can be covered by enhanced 90/10 match under the Medicaid EHR Incentive Program	Ad hoc deliverables as directed	300	\$ 76,500.00
Travel Expenses as Required			\$ 5,000.00
Project Management and Operations Support Totals		1564	\$ 404,000.00

Table 2: Federal Fiscal Year 2015 Tasks, Deliverables and Costs			
Task	Deliverable	Maximum Hours Allotted	Invoices to State for Each Task Not to Exceed
Provide ongoing project management support including leading weekly status meetings, monitoring EHR Incentive Payment policy changes issued by CMS including Meaningful Use Stage 2 and 3 monitoring and support.	Weekly project management materials - meeting agendas, minutes; whitepapers on CMS Policy changes	500	\$ 133,875.00
Develop and deliver annual SMHP/IAPD update before June 30, 2015 and provide training to State staff on SMHP/IAPD development.	Annual SMHP and IAPD updates, State staff training.	500	\$ 133,875.00
Other duties as assigned that can be covered by enhanced 90/10 match under the Medicaid EHR Incentive Program	Ad hoc deliverables as directed	300	\$ 80,325.00
Travel Expenses as Required			\$ 5,000.00
Project Management and Operations Support Totals		1300	\$ 353,075.00

V. Invoicing and Payment:

The total payments to Navigant by the State under this agreement shall not exceed \$757,075.00. If any offsite travel is needed, Navigant will invoice the State for the standard mileage rate as per state policy www.da.state.ks.us/ar/employee/travel for the travel. The actual travel time will be billed at the regular hourly rate.

Navigant will invoice the State for the fees set forth in this Section within 10 days after the end of each calendar month, detailing each deliverable on an hourly basis at the rates agreed upon below. The State will pay Navigant within 30 days after receipt of each monthly invoice.

Table 3: Resources and Rates by Federal Fiscal Year (FFY)			
Resource	Role	FFY 2014 Rate	FFY 2015 Rate
Dave Mosley	Project Director	\$280.00	\$294.00
Dane Pelfrey	Project Director	\$255.00	\$268.00
Johanna Barraza-Cannon	Content Expert Director	\$255.00	\$268.00
John Azpetia	Project Coordinator	\$255.00	\$268.00
Nancy Kwon	Project Coordinator	\$208.00	\$218.00
Neel Patel	Project Consultant	\$208.00	\$218.00
Barbara Huang	Project Consultant	\$208.00	\$218.00

VI. HIPAA Confidentiality

Pursuant to Section 3.42 of the RFP, Navigant hereby agrees to execute the Business Associate Agreement attached hereto as Attachment A.

VII. HITECH; Compliance with Federal Regulations:

Navigant agrees to comply with all applicable federal regulations associated with the Health Information Technology for Economic and Clinical Health Act.

VIII. Other:

All remaining terms and conditions of the above-referenced Contract (including any attachments and amendments thereto, and documents incorporated therein) shall remain in force and effect and binding on the parties hereto.

IN WITNESS WHEREOF, Navigant, KDHE, and the Director Procurements and Contracts, hereto affix their signatures to this Agreement. This Agreement shall be effective upon signature of all parties.

NAVIGANT CONSULTING, INC.

Catherine Sreckovich 4.14.14
Catherine Sreckovich Date
Managing Director

KANSAS DEPARTMENT OF
HEALTH AND ENVIRONMENT

Robert Moser MD 4/17/14
Robert Moser MD Date
Secretary

KANSAS DEPARTMENT OF
ADMINISTRATION

Tracy Diel TS
4/22/14
Tracy Diel, Director Date
Department of Administration, Director of Procurement and Contracts

ATTACHMENT A
BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT is made and entered into by and between the Kansas Department of Health and Environment (hereinafter referred to as "KDHE") and Navigant Consulting, Inc. (Navigant) (hereinafter referred to as "Business Associate").

Notwithstanding Section V of this Business Associate Agreement (hereinafter referred to as "BAA"), the term of this BAA shall run concurrently with the Underlying Contract between the parties and shall have the same effective date and termination date as the Underlying Agreement.

RECITALS

The Parties to this BAA have a relationship whereby KDHE may provide Business Associate access to Protected Health Information (hereinafter referred to as "PHI"), which may include electronic Protected Health Information, that Business Associate will use to fulfill its contractual obligations to KDHE.

KDHE and Business Associate acknowledge that each party has certain obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended, including those provisions of the American Recovery and Reinvestment Act of 2009 ("ARRA"), specifically the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and the statutes implementing regulations to maintain the privacy and security of PHI, and the parties intend this BAA to satisfy those obligations including, without limitation, the requirements of 45 CFR 164.504(e).

KDHE is a Hybrid Entity under HIPAA, specifically the Division of Health Care Finance within KDHE containing the Covered Entity functions. Therefore Business Associate is not permitted to use or disclose health information in ways that KDHE could not. This protection continues as long as the data is in the hands of Business Associate. Business Associate acknowledges that for the purposes of this BAA, Business Associate is a "business associate" as that term is defined in 45 CFR § 160.103, and therefore the requirements of HIPAA apply to Business Associate in the same manner that they apply to KDHE pursuant to 42 USC § 17931(a).

NOW THEREFORE, in consideration of the mutual promises below and other good and valuable consideration the parties agree as follows:

I. DEFINITIONS

- a) "Administrative Safeguards" shall mean the administrative actions, policies and procedures to manage the selection, development, implementation and maintenance of security measures to protect PHI and to manage the conduct of Business Associate's workforce in relation to the protection of that PHI.
- b) "Business Associate" shall have the same meaning as the term "Business Associate" as defined in 45 CFR 160.103.
- c) "Data Aggregation Services" shall mean, with respect to PHI created or received by Business Associate in its capacity as a Business Associate of KDHE, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities, as defined in 45 CFR § 164.501 and as such term may be amended from time to time in this cited regulation.
- d) "Designated Record Set" shall mean a group of records maintained by or for KDHE that consists of the following: (a) medical records and billing records about Individuals maintained by or for a health care provider; (b) enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (c) records used in whole or in part, by or for KDHE to make decisions about Individuals. For these purposes, the term "record" means any item, collection, or group of information that includes PHI and is maintained, collected, used, or disseminated by or for KDHE.
- e) "Disclosure" shall mean the release, transfer, provision of, access to, or divulging in any other manner of PHI outside the entity holding the information.

- f) "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, the implementation regulations promulgated thereunder by the U.S. Department of Health and Human Services, the HITECH (as defined below) and any future regulations promulgated thereunder, all as may be amended from time to time.
- g) "Individual" shall have the same meaning as the term "individual" as defined in 45 CFR 160.103, and any amendments thereto, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- h) "Physical Safeguards" shall mean the physical measures, policies and procedures to protect KDHE's electronic information systems and related buildings and equipment from natural and environmental hazards and unauthorized intrusion.
- i) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164.
- j) "Protected Health Information" shall have the same meaning as the term "protected health information", as defined in 45 CFR 160.103 and any amendments thereto, limited to the information created or received by Business Associate from or on behalf of KDHE.
- k) "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR 164.103.
- l) "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his/her designee.
- m) "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
- n) "Security Rule" shall mean the Standards for Security of Electronic Protected Health Information at 45 CFR Parts 160, 162 and 164.
- o) "Technical Safeguards" shall mean the technology and the policy and procedures for its use that protect PHI and control access to it.
- p) "Underlying Contract" means any written contract for services between KDHE and Business Associate.
- q) "Use" shall mean, with respect to PHI, the sharing, employment, application, utilization, examination, or analysis of such information within any entity that maintains such information.
- r) Capitalized terms used, but not otherwise defined, in this BAA shall have the same meaning ascribed to them in HIPAA, the Privacy Rule, the Security Rule, or HITECH or any future regulations promulgated or guidance issued by the Secretary.
- I. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a) Use and Disclosure. Business Associate agrees to not use or disclose PHI other than as permitted or required by this BAA or as Required by Law.
- b) Safeguards to be in Place. Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this BAA. Additionally, Business Associate shall implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of KDHE as required by the Security Rule.
- c) Duty to Mitigate. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA or the Privacy Rule and to communicate in writing, such procedures to KDHE.
- d) Business Associate's Agents and Subcontractors. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of KDHE agrees, in writing in the form of a Business Associate Agreement, to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such information, including implementation of reasonable and appropriate safeguards to protect PHI. Business Associate agrees that it is directly liable for any actions of its subcontractors that results in a violation of this Agreement. Business Associate also agrees to make available to KDHE any contracts or agreements Business Associate has with any subcontractors Business Associate provides PHI under this BAA.

- e) **Duty to Provide Access.** To the extent Business Associate has PHI in a Designated Record Set, Business Associate agrees to provide access, at the request of KDHE, to the PHI in the Designated Record Set to KDHE or, as directed by KDHE, to the Individual, in order to meet the requirements under 45 CFR 164.524. Any denial by Business Associate of access to PHI shall be the responsibility of, and sufficiently addressed by, Business Associate, including, but not limited to, resolution of all appeals and/or complaints arising therefrom.
- f) **Amendment of PHI.** Business Associate agrees to make any amendment(s) to PHI in its possession contained in a Designated Record Set that KDHE directs or agrees to pursuant to 45 CFR 164.526 at the request of KDHE or an Individual, and within a reasonable time and manner.
- g) **Duty to Make Internal Practices Available.** Business Associate agrees to make its internal practices, books and records, including policies and procedures relating to the use and disclosure of PHI, and any PHI received from, or created or received by Business Associate on behalf of KDHE, available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining KDHE's compliance with the Privacy Rule.
- h) **Documenting Disclosures/Accounting.** Business Associate agrees to document any disclosures of PHI and information in its possession related to such disclosures as would be required for KDHE to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Business Associate agrees to provide to KDHE information collected in accordance with Section II(h) of this BAA, to permit KDHE to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- i) **Reporting Disclosures to KDHE.** In addition to the duty to mitigate under Section II(c), Business Associate agrees to report to KDHE any use or disclosure of the PHI not provided for by this BAA or the Privacy Rule of which it or its officers, employees, agents or subcontractors become aware, including any Security Incident of which it becomes aware, as soon as practicable but no longer than three (3) business days after the discovery of such disclosure. Notice to KDHE shall consist of notifying the KDHE Privacy Officer by phone or email of the occurrence of an unauthorized use, disclosure or security incident.
- j) **Notification of Breach.** Business Associate shall notify Covered Entity within three (3) business days after it, or any of its employees, subcontractors, or agents, reasonably suspects that a breach of unsecured PHI as defined by 45 CFR 164.402 may have occurred, irrespective of any occurrence or non-occurrence of harm. Notice to KDHE shall consist of notifying the KDHE Privacy Officer by phone or email of the occurrence of a Breach or suspected occurrence of a Breach. Business Associate shall exercise reasonable diligence to become aware of whether a breach of unsecured PHI may have occurred and, except as stated to the contrary in this Section, shall otherwise comply with 45 CFR 164.410 in making the required notification to Covered Entity. Business Associate shall cooperate with Covered Entity in the determination as to whether a breach of unsecured PHI has occurred and whether notification to affected individuals of the breach of unsecured PHI is required by 45 CFR 164.400 et seq., including continuously providing the Covered Entity with additional information related to the suspected breach as it becomes available. In the event that Covered Entity informs Business Associate that (i) Covered Entity has determined that the affected individuals must be notified because a breach of unsecured PHI has occurred and (ii) Business Associate is in the best position to notify the affected individuals of such breach, Business Associate shall immediately provide the required notice (1) within the time frame defined by 45 CFR 164.404(b), (2) in a form and containing such information reasonably requested by Covered Entity, (3) containing the content specified in 45 CFR 164.404(c), and (4) using the method(s) prescribed by 45 CFR 164.404(d). In addition, in the event that Covered Entity indicates to Business Associate that Covered Entity will make the required notification, Business Associate shall promptly take all other actions reasonably requested by Covered Entity related to the obligation to provide a notification of a breach of unsecured PHI under 45 CFR 164.400 et seq. Business Associate shall indemnify and hold Covered Entity harmless from all liability, costs, expenses, claims or other damages that Covered Entity, its related corporations, or any of its or their directors, officers, agents, or employees, may sustain as a result of a Business Associate's breach, or Business Associate's subcontractor or agent's breach, of its obligations under this Agreement.

II. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- a) General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to, Covered Entity for the purposes set forth in III(b), if such use or disclosure of PHI would not violate the Privacy Rule if done by Covered Entity.
 - b) Specific Use and Disclosure Provisions.
 - 1. Business Associate may use and disclose PHI to perform services for Covered Entity, including specific services, as set out in the Underlying Agreement, and any additional services necessary to carry out those specific services in the Underlying Agreement.
 - 2. Business Associate may use PHI in its possession for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate. Business Associate may disclose PHI in its possession for the proper management and administration of Business Associate, provided that disclosures are Required By Law. Business Associate may only de-identify PHI in its possession obtained from Covered Entity with Covered Entity's prior written consent, in accordance with all de-identification requirements of the Privacy Rule.
 - 3. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1). Covered Entity shall be furnished with a copy of all correspondence sent by Business Associate to a federal or state authority.
 - 4. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation Services to Covered Entity.
 - 5. Any use or disclosure of PHI by Business Associate shall be in accordance with the minimum necessary policies and procedures of Covered Entity and the regulations and guidance issued by the Secretary on what constitutes the minimum necessary for Business Associate to perform its obligations to Covered Entity under this Agreement and the Underlying Agreement.
- III. OBLIGATIONS OF COVERED ENTITY

- a) Covered Entity shall notify Business Associate of any limitation(s) in its Notice of Privacy Practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
 - b) Covered Entity shall notify Business Associate in a timely manner of any changes in, or revocation of, permission by an Individual to use or disclose PHI to the extent that such change may affect Business Associate's permitted or required use or disclosure of PHI.
 - c) Covered Entity shall notify Business Associate in a timely manner of any restriction to the use and/or disclosure of PHI, which the Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
 - d) Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.
- V. TERMINATION

- a) Term. The term of this Agreement shall run concurrently with the Underlying Agreement with Covered Entity and shall terminate upon termination of the Underlying Agreement and when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy the PHI, protections are extended to such information, in accordance with the termination provisions of Section (V)(c)(2).
- b) Termination for Cause. Upon either party's knowledge of a material breach by the other party, such party shall either:
 - 1. Provide an opportunity for the breaching party to cure the breach, end the violation, or terminate this Agreement if the breaching party does not cure the breach or end the violation within five (5) business days;
 - 2. Immediately terminate the Agreement if the breaching party has breached a material term of this Agreement and cure is not possible; or

3. If neither termination nor cure is feasible, the non-breaching party shall report the violation to the Secretary.
 - c) Effect of Termination.
 1. Except as provided in paragraph V(c)(2) of this Agreement, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification in writing of the conditions that make return or destruction infeasible. Upon verification that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. If it is infeasible for Business Associate to obtain, from a subcontractor or agent, any PHI in the possession of the subcontractor or agent, Business Associate must provide a written explanation to Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.
 - d) Judicial or Administrative Proceedings. Notwithstanding any other provision herein, Covered Entity may terminate the applicable Underlying Agreement, effective immediately, upon a finding or stipulation that Business Associate violated any applicable standard or requirement of the Privacy Rule or the Security Rule or any other applicable laws related to the security or privacy of PHI, relating to the Underlying Agreement, in any criminal, administrative or civil proceeding in which the Business Associate is a named party.
- VI. MISCELLANEOUS
- a) Regulatory References. A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended and for which compliance is required.
 - b) Amendment. No change, amendment, or modification of this Agreement shall be valid unless set forth in writing and agreed to by both parties, except as set forth in Section VI(l) below.
 - c) Indemnification. Business Associate shall indemnify Covered Entity for any and all claims, inquiries, costs or damages, including but not limited to any monetary penalties, that Covered Entity incurs arising from a violation by Business Associate, or a subcontractor or agent of Business Associate, of its obligations hereunder.
 - d) Survival. The respective obligations of Business Associate under this Agreement shall survive the termination of this Agreement.
 - e) Interpretation. Any ambiguity or inconsistency in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule, the Security Rule, and the ARRA.
 - f) No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity and its respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
 - g) Notices. Any notices to be given to either party under this Agreement shall be made in writing and delivered via e-mail at the address given below:
Business Associate:
Covered Entity: Cory V. Sheedy, csheedy@kdheks.gov
 - h) Headings. The section headings are for convenience only and shall not be construed to define, modify, expand, or limit the terms and provisions of this Agreement.
 - i) Governing Law and Venue. This Agreement shall be governed by, and interpreted in accordance with, the internal laws of the State of Kansas, without giving effect to its conflict of law provisions.
 - j) Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors and assigns.

- k) Effect on Underlying Agreement. If any portion of this Agreement is inconsistent with the terms of the Underlying Agreement, the terms of this Agreement shall prevail. Except as set forth above, the remaining provisions of the Underlying Agreement are ratified in their entirety.
- l) Modification. The parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. The parties specifically agree to take such action as may be necessary to implement the standards and requirements of HIPAA and other applicable state and federal laws relating to the security or confidentiality of PHI as determined solely by Covered Entity.

In the event that a federal or state law, statute, regulation, regulatory interpretation or court/agency determination materially affects this Agreement, as is solely determined by Covered Entity, the parties agree to negotiate in good faith any necessary or appropriate revisions to this Agreement. If the parties are unable to reach an agreement concerning such revisions within the earlier of sixty (60) days after the date of notice seeking negotiations or the effective date of the change in law or regulation, or if the change in law or regulation is effective immediately, the Covered Entity, in its sole discretion, may unilaterally amend this Agreement to comply with the change in law upon written notice to Business Associate.

VII. OBLIGATIONS OF BUSINESS ASSOCIATE PURSUANT TO HITECH

- a) Access to PHI in an Electronic Format. If Business Associate uses or maintains PHI in an Electronic Health Record, Business Associate must provide access to such information in an electronic format if so requested by an Individual. Any fee that Business Associate may charge for such electronic copy shall not be greater than Business Associate's labor costs in responding to the request. If an Individual makes a direct request to Business Associate for access to a copy of PHI, Business Associate will promptly inform the Covered Entity in writing of such request.
- b) Prohibition on Marketing Activities. Business Associate shall not engage in any marketing activities or communications with any individual unless such marketing activities or communications are allowed by the terms of the Underlying Agreement and are made in accordance with HITECH or any future regulations promulgated thereunder. Notwithstanding the foregoing, any payment for marketing activities should be in accordance with HITECH or any future regulations promulgated thereunder.
- c) Application of the Security Rule to Business Associate. Business Associate shall abide by the provisions of the Security Rule and use all appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. Without limiting the generality of the foregoing sentence, Business Associate shall:
 - (i) Adopt written policies and procedures to implement the same administrative, physical, and technical safeguards required of the Covered Entity; and
 - (ii) Abide by the most current guidance on the most effective and appropriate technical safeguards as issued by the Secretary.

If Business Associate violates the Security Rule, it acknowledges that it is directly subject to civil and criminal penalties.

VIII. ADDITIONAL OBLIGATIONS OF BUSINESS ASSOCIATE

Business Associate shall not receive any remuneration, directly or indirectly, in exchange for any PHI, unless so allowed by the terms of the Underlying Agreement and in accordance with HITECH and any future regulations promulgated thereunder.

IX. ENFORCEMENT

Business Associate acknowledges that, in the event it, or its subcontractor or agent, violates any applicable provision of the Security Rule or any term of this Agreement that would constitute a violation of the Privacy Rule, Business Associate will be subject to and will be directly liable for any and all civil and criminal penalties that may result from such violation.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date reflected above.

On behalf of:

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

By

 4/17/14
Robert Moser, MD
Secretary, KDHE

On behalf of:

NAVIGANT CONSULTING, INC

By  4.14.14
Catherine Sreckovich
Managing Director

Date